



Hundredth Legislature - First Session - 2007
Committee Statement
LB 121

Hearing Date: January 23, 2007

Committee On: Banking, Commerce and Insurance

Introducer(s): (Banking, Commerce and Insurance)

Title: Adopt the Captive Insurers Act

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

7	Yes	Senators Pahls, Carlson, Christensen, Gay, Hansen, Pankonin, Pirsch
1	No	Senator Langemeier
	Present, not voting	
	Absent	

Proponents:

Senator Rich Pahls
Tim Wagner
Galen Ullstrom
Jan McKenzie
Tom Mays

Representing:

Introducer
NE Department of Insurance
Mutual of Omaha Insurance Co.
NE Insurance Federation
Pacific Life Insurance

Opponents:

Representing:

Neutral:

Joe Elliott

Representing:

Professional Insurance Agents Association

Summary of purpose and/or changes:

LB 121 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Insurance, would provide for the organization and regulation of captive insurers. A captive insurer would be defined as a domestic insurer authorized to provide insurance and reinsurance to its parents, any affiliated entity, or both.

The bill would provide, section by section, as follows:

Section 1 would enact a new section to provide for a named act: the Captive Insurers Act.

Section 2 would enact a new section to provide that the purposes of the act are to set forth the procedures for organizing and regulating the operations of captive insurers and to encourage integrity, financial solvency, and stability of captive insurers to promote the development of Nebraska businesses.

Section 3 would enact a new section to provide definitions for “affiliated entity”, “captive insurer” (a domestic insurer authorized to provide insurance and reinsurance to its parent, any affiliated entity, or both), “control”, “director”, and “parent”.

Section 4 would enact a new section to provide that no captive insurer shall adopt the name of any existing insurer or any name that may mislead the public.

Section 5 would enact a new section to provide for application for and issuance of a certificate of authority to a captive insurer to transact business of insurance and to specify what lines of insurance a captive insurer may transact.

Section 6 would enact a new section to provide for a board of directors or other governing body of a captive insurer.

Section 7 would enact a new section to provide for annual renewal of the certificate of authority issued to a captive insurer.

Section 8 would enact a new section to provide that every captive insurer shall file an annual report of its financial condition with the Director of Insurance and that the director may prescribe the format and frequency of other reports.

Section 9 would enact a new section to provide requirements for a captive insurer to maintain capital and surplus.

Section 10 would enact a new section to provide that the Director of Insurance may examine the financial condition, affairs, and management of any applicant or captive insurer pursuant to the Insurers Examination Act (sections 44-5901 to 44-5910).

Section 11 would enact a new section to provide that the Director of Insurance may prohibit or limit any investment that threatens solvency or liquidity of a captive insurer or if such investments are not made in accordance with the approved plan of operation, and provide that no captive insurer may make a loan to or an investment in its parent or affiliated entities without prior written approval of the director.

Section 12 would enact a new section to provide requirements for a captive insurer in taking credit for reinsurance.

Section 13 would enact a new section to provide that a captive insurer shall not be a member of either Nebraska guaranty association and that neither Nebraska guaranty association shall be applicable to coverage offered by a captive insurer.

Section 14 would enact a new section to provide for approval by the Director of Insurance of voluntary dissolution of a captive insurer.

Section 15 would enact a new section to provide that the Director of Insurance may suspend or revoke a certificate of authority or may impose an administrative fine not to exceed \$1,000 per violation, or both, for violations of the act as set out in this section, and provide in lieu of or in addition to such administrative fines, the director may issue a cease and desist order to a captive insurer.

Section 16 would enact a new section to provide the Director of Insurance with rule and regulation authority to carry out the act.

Section 17 would enact a new section to provide for specific provisions of the insurance statutes to apply to captive insurers.

Section 18 would amend section 77-908 of the premium tax statutes to provide that a captive insurer authorized under the Captive Insurers Act shall each year pay a tax of one percent of the gross amount of direct writing premiums received by it for business transacted in Nebraska.

Section 19 would provide repealers.

Explanation of amendments, if any:

The committee amendments (AM87) would become the bill.

1. The committee amendments would make three clean-up amendments:

In section 11, on page 6, line 16, “company” has been stricken and “captive insurer” has been inserted (page 7, line 6 of the bill as introduced).

In section 14, on page 7, line 14, “the” has been stricken and “a” has been inserted (page 8, line 3 of the bill as introduced).

In section 18, on page 20, line 3, “(3)” has been stricken and “(c)” has been inserted (section 17, on page 9, line 16 of the bill as introduced).

2. The committee amendments would insert a new section 16 in the Captive Insurers Act to allow for the creation of special purpose financial captive insurers. A special purpose financial captive insurer would be limited to providing insurance or reinsurance protection for a parent or affiliated Nebraska domestic life insurer. The amendments would define for purposes of this section “counterparty”, “insolvency”, insurance securitization”, “organizational document”, “permitted investments”, “securities”, “special purpose financial captive insurer”, “special purpose financial captive insurer contract”, and “special purpose financial captive insurer securities” (Subsection (2)). The amendments would specify that in the

event of a conflict between this section and other sections of the act, this section applies, and that specific requirements of this section do not apply if the Director of Insurance finds that a specific requirement is inappropriate because of the nature of the risk and if the special purpose financial captive insurer meets criteria established by rule and regulation of the director. (Subsection (3)). The amendments would allow special purpose financial captive insurers to be formed as stock corporations, limited liability companies, partnership or other form of organization approved by the director. (Subsection (4)). The amendments would restrict special purpose financial captive insurers to entering only special purpose financial captive insurers contracts except as otherwise set forth. (Subsection (5)).

The committee amendments would grant special purpose financial captive insurers authority to issue securities, enter contracts, and enter asset management agreements or other transactions. (Subsection (6)). The amendments would subject asset management agreements to the approval of the director. (Subsection (7)). The amendments would grant the special purpose financial captive insurer the authority to enter a special purpose financial captive insurer contract under the conditions as set forth. (Subsection (8)). The amendments would adopt standards for granting credit for reinsurance to these transactions. (Subsection (9)).

The amendments would grant the director the authority under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to seek an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer on grounds as set forth. The amendments would set forth the procedure for this process. (Subsection (10)). The amendments would establish criteria for the payment of dividends. (Subsection (11)). The amendments would provide for the confidentiality of financial information received by the director under this section. (Subsection (12)).

3. The committee amendments would amend the proposed new provisions in section 77-908 in section 19 (section 18 of the bill as introduced) to provide that the premium tax for captive insurers would be “one-fourth” of one percent rather than “one percent” of the gross amount of direct writing premiums received by it for business transacted in Nebraska.

Senator Rich Pahls, Chairperson